

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Downtown Fernandina Beach Station
Fernandina Beach, FL

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Docket No. A2013-7

PUBLIC REPRESENTATIVE'S RESPONSE IN SUPPORT OF
PETITIONER DAVID A. GRANGER'S APPLICATION
FOR EMERGENCY SUSPENSION PENDING REVIEW

(August 2, 2013)

On July 22, 2013, Petitioner, David A. Granger,¹ filed a request that the Commission issue an order immediately suspending the final determination in this proceeding pending Commission review.² In support of the suspension request, the Petitioner states that the final determination was posted on July 9, 2013, and “[t]he closing date of the post office has been communicated to patrons of the post office as August 9, 2013.” *Id.* at 1-2. The Postal Service has not opposed the suspension

¹ Additional petitions were filed by Julie L. Batts and Jane S. Van Delinder. See Letter from Julie L. Batts to Commission's office, dated July 22, 2013; Letter from Jane S. Van Delinder to Postal Regulatory Commission, dated July 22, 2013 (received by Office of the Secretary July 31, 2013). Additional comments were received from postal patrons William J. Mock Jr., Trevett Mock, LLC, and John Joseph Cascone. See Participant Statement of Trevett Mock, LLC, July 29, 2013; Participant Statement of William J. Mock Jr., July 29, 2013 (Mock Comments); Letter from John Joseph Cascone, August 1, 2013. Mr. Mock's comments do not request suspension of the final determination, but note that “not enough notice [was] given for the closure.” Mock Comments at 1.

² See Petition for Review, Appeal of the Postal Service's Final Determination to close the Fernandina Beach Downtown Station post office, July 22, 2013, at 1 (Granger Petition).

request.³ For the following reasons, the Public Representative supports the Petitioner's suspension request.

I. The Statutory Requirements of 39 U.S.C. § 404(d)(4)

Section 404(d)(4) of title 39 states that “[t]he Postal Service shall take no action to close or consolidate a post office until 60 days after its written determination is made available to persons served by such post office.” 39 U.S.C. § 404(d)(4). The final determination, notifying patrons of the closure of the Downtown Fernandina Beach post office, was posted on July 9, 2013.⁴ Granger Petition at 1. Despite the 60-day notification period required by section 404(d)(4), patrons of the Downtown Fernandina Beach post office have been told that the post office will close on August 9, 2013—only 31 days after the date the final determination was posted. *Id.* at 1-2.⁵ The local press reported⁶ that Alice Ryle, the Postal Service's Discontinuance Coordinator for the Gulf and Atlantic region, confirmed that the post office would close August 10, 2013.⁷ There is no indication that this is an emergency suspension that would excuse compliance with 39 U.S.C. § 404(d)(4).⁸

³ The deadline for the Postal Service to file answer responding to application for suspension was August 1, 2013. Order No. 1789, Notice and Order Accepting Appeal and Establishing Procedural Schedule, July 24, 2013, at 5.

⁴ Although the Postal Service did not include the date-stamped final determination with the administrative record filed on August 1, 2013, the Postal Service's Motion to Dismiss confirms the final determination was posted on July 9, 2013. See Motion of United States Postal Service to Dismiss Proceedings, August 1, 2013, at 3 (Motion to Dismiss).

⁵ Petitioner confirmed on the phone that the August 9, 2013 closing date has been stated to patrons by Postal Service employees.

⁶ See Michael Clinton, *Fernandina Beach post office to close*, Jacksonville Business Journal (July 15, 2013, 7:00 AM EDT), <http://www.bizjournals.com/jacksonville/blog/morning-edition/2013/07/fernandina-beach-post-office-to-close.html>; Susan Hardee Steger, *Historic Fernandina Beach Post Office to close August 10*, Fernandina Observer (July 10, 2013, 3:37 PM), <http://fernandinaobserver.com/2013/07/10/historic-fernandina-beach-post-office-to-close-august-10/>.

⁷ August 10, 2013 is a Saturday, and according to www.usps.com, the Downtown Fernandina Beach post office is closed on Saturdays and Sundays. This could explain why the Petitioner was told that the closure was slated for August 9, 2013.

⁸ The post office remains open, and the administrative process to close the post office has been ongoing for some time. The administrative record notes in several places that this is not an emergency suspension. See Administrative Record, August 1, 2013, at Item Nos. 2, 3.

In light of the fact that the Downtown Fernandina Beach post office is scheduled to close prematurely in contravention of 39 U.S.C. § 404(d)(4), the Commission should grant the Petitioner's request to suspend the final determination, maintain the status quo pending the Commission's review, and protect the statutory rights of the patrons of the Downtown Fernandina Beach post office.

II. The Public Interest

The primary interest of the general public in the Commission's review of post office closings is assurance that the process for closure of post offices is conducted in a transparent and fair manner that complies the requirements of 39 U.S.C. § 404(d) and applicable Commission and Postal Service regulations. The public interest is not served when the Postal Service is permitted to close a post office while an appeal is pending. This is particularly true in cases like this one, where the proposed closure would occur during the 60-day statutorily mandated waiting period and prior to the deadlines for responses to the Postal Service's motion to dismiss and the petitioners' initial briefs.

III. Erosion of the Commission's Jurisdiction

While the Postal Service argues that this proceeding is outside the scope of the Commission's jurisdiction, this is an issue for the Commission to decide, not the Postal Service. See Motion to Dismiss at 7-8. If the Postal Service closes the Downtown Fernandina Beach post office, as planned, prior to the deadline for the Petitioners' responses and the Commission's ruling on the Motion to Dismiss, the Petitioners' adjudicatory rights, as well as the Commission's jurisdiction, will have been eroded by the Postal Service's unilateral action.

In Docket No. RM2011-13, the Commission stated that it believed "absent extraordinary circumstances, no post office should be closed or consolidated if an appeal is pending."⁹ The Postal Service has not offered any evidence of extraordinary

⁹ Docket No. RM2011-13, Order No. 814, Notice of Proposed Rulemaking Regarding Appeals of Postal Service Determinations to Close or Consolidate Post Offices, August 18, 2011, at 5. In that proceeding, the Commission proposed a rule that would suspend the effectiveness of a final

circumstances in its filings. In fact, it does not oppose the Petitioner's request. The Commission has the ability to prevent a closure of the Downtown Fernandina Beach post office while the appeal is pending because the Petitioner filed a timely request for suspension of the final determination. Section 404(d)(5) grants the Commission clear authority to grant requests for suspension of the final determination, like the one filed by the Petitioner. Granting such request would prevent the Postal Service from acting unilaterally in violation of the Petitioner's statutory and adjudicatory rights and from eroding the Commission's authority to determine whether an appeal falls within the scope of its jurisdiction.

IV. Alternative Approach

In Docket No. A2013-4, the Commission faced similar facts when the Postal Service planned to close a post office approximately a month after it posted the final determination.¹⁰ In that proceeding, the Commission stated that "[t]he Postal Service's customary practice is to maintain operations at a post office for which a final determination has been issued pending the disposition on appeal." *Id.* at 2. The Commission then ordered that "[i]f the scheduled closure is not an emergency suspension, pursuant to 39 U.S.C. § 404(d)(4), the Postal Service is required to continue operating the Francitas post office for 60 days from the date of posting the final determination." *Id.*

If the Commission does not suspend the final determination pending its review, the Public Representative requests that the Commission order the Postal Service to continue operating the Downtown Fernandina Beach post office in accordance with 39 U.S.C. § 404(d)(4). In that case, the Commission should clarify that the Commission,

determination until an appeal is decided. *Id.* Due to comments from the Postal Service and Valpak, the Commission deferred consideration of this proposal and retained its previous rule. Docket No. RM2011-13, Order No. 1171, Order Adopting Final Rules Regarding Appeals of Postal Service Determinations to Close or Consolidate Post Offices, January 25, 2012, at 8 (Order No. 1171). In light of the Commission's 1.5 year experience with the revised rules promulgated in Order No. 1171, the Public Representative suggests that the Commission revisit the proposed rules on which it deferred consideration in Order No. 1171.

¹⁰ Docket No. A2013-4, Order No. 1683, Order Concerning Application for Suspension of Final Determination, March 26, 2013, at 1-2.

and not the Postal Service, determines whether a particular closing falls within the Commission's jurisdiction.

Respectfully submitted,

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